

**IN THE SUPREME COURT
STATE OF ARIZONA**

**PETITION TO AMEND RULE 38)
OF THE RULES OF THE) Supreme Court No. R-07-00__
SUPREME COURT OF ARIZONA)
(Expedited Consideration Requested)**

INTRODUCTION

This petition is brought under Rule 28 of the Rules of the Supreme Court. Petitioners seek amendment of Rule 38(c) and (d) of the Rules of the Supreme Court pertaining to: (1) the conditional admission to practice law of law students participating in clinical law courses as part of their legal education, and (2) the conditional admission of law school faculty. The petitioners are the Deans of the three law schools located in Arizona and the President of the State Bar of Arizona.

SUMMARY DESCRIPTION OF THE PROPOSED AMENDMENT

Rule 38(d) establishes a protocol for experiential learning opportunities for law students practicing under law school clinical faculty supervision. Rule 38(c) establishes a process for limited and temporary admission of law school faculty members. As drafted and previously amended, the language of the Rule contains limitations in its applicability to all of the accredited law schools in the state. The purpose of the proposed amendment is explicitly to include the

Phoenix School of Law¹ in the operation of the Rule. No substantive change of any kind is sought in the Rule's provisions governing the activities, requirements, privileges, or limitations of clinical law students or faculty.

EXPEDITED CONSIDERATION

Petitioners request expedited adoption of the proposed amendment under Rule 28(G), without delay for comment or hearings, in light of the following considerations:

- (1) The proposed amendment is non-controversial. It is written to clarify or update the Rule.
- (2) The proposed amendment better serves the Rule's objectives in broadening the availability of the services of clinical law students to the under-served.
- (3) There is some urgency to the amendment, as it will accommodate the needs of current law students in their access to clinical education opportunities.

NEED FOR THE AMENDMENT

As presently written, Rule 38(d) establishes detailed provisions for law student practice under clinical-faculty supervision. Rule 38(c) provides similar provisions for limited, temporary admission to practice by law school faculty during their tenure at an Arizona law school. However, the current language is

¹ The ABA accrediting agency notified the Phoenix School of Law of its provisional accreditation on June 8, 2007. Full accreditation is anticipated within 3 years. Rule 34(b)(1) of the Rules of the Supreme Court explicitly provides for graduates of provisionally and fully accredited law schools being treated equally with respect to their applications for admission to the bar.

not consistent within these sections of the Rule. It is, at best, ambiguous as to its applicability to any law school other than the law schools located at Arizona State University and the University of Arizona.

Rule 38(d) was originally adopted at a time when those two schools were the only accredited law schools in the State of Arizona. The Phoenix School of Law is, however, now a third accredited Arizona law school whose graduates will be qualified to take the Arizona bar examination and be admitted to the Arizona bar.

It does not appear that this Court intended Rule 38(c) and (d) to exclude students and faculty of accredited law schools other than those located at Arizona State University and the University of Arizona. In fact, some parts of the Rule (e.g., 38(d)(3)(F)) contain language which seems to encompass clinical programs of other accredited law schools. But that language does not appear consistently throughout.

Rule 38(d), by its own terms, has two objectives:

- (1) “...providing competent legal services for all persons, including those unable to pay for these services....” and,
- (2) “...encourag[ing] law schools to provide clinical instruction in trial work of varying kinds....”

These objectives would be better served by clarifying the Rule to ensure that it includes the students and faculty of every accredited law school now providing J.D. degree education in the State of Arizona.

The American Bar Association, the accrediting agency, explicitly requires that modern-day law schools offer clinical learning opportunities to their

students.² Consistent with those requirements, Phoenix School of Law has established a clinical program and continues to develop that program and its other experiential learning programs as its student body rapidly grows. However, operating a complete clinical program requires clear assurance that Phoenix School of Law's clinical program is authorized under Rule 38(d). The students and faculty of the Phoenix School of Law do not wish to risk any accusation that they are engaged in the unauthorized practice of law.³

SPECIFICATION OF PROPOSED CHANGES

Following is the complete verbatim text of the requested changes to sections (c) and (d) of Rule 38. Text to be deleted is struck through and text to be added is underlined.

ARIZONA REVISED STATUTES ANNOTATED
RULES OF THE SUPREME COURT OF ARIZONA
V. REGULATION OF THE PRACTICE OF LAW
C. ADMISSION TO PRACTICE OF LAW

Rule 38. Special Exceptions to Standard Examination and Admission Process

(c) Full-Time Law School Faculty Members.

1. *Application; Examination by Committee on Examinations not Required.*
Upon recommendation of the dean of the ~~College of Law of the University of Arizona or of the College of Law of Arizona State University~~ a law school in Arizona which is either provisionally or fully accredited by the American Bar Association or, as to such dean, upon recommendation of the president of such university or school, a full-time faculty member of such college law school may

² ABA Standards for Approval of Law Schools, Standard 302(b)(1), provides:
A law school shall offer substantial opportunities for: (1) live-client or other real-life practice experiences, appropriately supervised...

³ It is not common, but clinical programs at law schools around the country have occasionally faced challenges to appearances by clinical students, challenges usually brought by disappointed litigants who had expected easy, unopposed victory over indigent adversaries.

apply for admission to practice law in the State of Arizona as an active member of the bar without examination by the Committee on Examinations.

2. *Requirements.* An applicant under this rule must be a graduate with a juris doctor degree from a law school provisionally or fully approved by the American Bar Association at the time of such applicant's graduation. Applicants shall be required to submit proof of their admission by examination to the bar of another state or the District of Columbia and shall pay the current applicable application and investigation fees. Each applicant must file an application with the Committee containing information relative to his or her educational and professional background and moral character.

3. *Investigation.* The Committee may require such information from any such applicant as it is authorized to require of any applicant not within the exception made by this rule and may make such investigations, conduct such hearings, and otherwise process said application as if made pursuant to the provisions of the foregoing rules governing application for admission by examination.

4. *Recommendation for Admission by Committee.* If after such investigation as the Committee may deem appropriate it concludes that such applicant possesses the moral qualities and the intellectual attainments required of all other applicants for admission to practice law in the State of Arizona, it shall recommend such applicant for admission to practice and, if said recommendation is accepted by the Court, said applicant shall be admitted to practice and be enrolled as a member of the state bar, and except for the limitations imposed by this subsection, shall have all privileges and rights enjoyed by any member of the State Bar of Arizona admitted pursuant to application and admission by examination. Applicants admitted under this rule shall be subject to all the duties and obligations of members under Rules 41 and 42. The Committee may receive and act upon any such application at any time or in its discretion may require that such applications be received and processed by the Committee at the same time and in the same manner as applications for admission upon examination.

5. *Limitations on Practice.* Faculty members who are admitted to the bar pursuant to this subsection and who subsequently terminate their full-time faculty status shall not retain active bar membership unless they pass the Arizona bar examination. Faculty members who are admitted to the bar under this subsection shall limit their practice hours in accordance with the limits imposed by each university and shall in no event engage in compensated practice as members of the state bar for more than an average of eight hours per week during each calendar year. The dean of each law school shall annually advise the executive director of the state bar that faculty members who have been admitted to the bar under this subsection have complied with the reporting requirements under university rules and the limits imposed by this subsection. For purposes of this rule, activities of clinical law professors in connection with supervision of a clinical law program as described in paragraph

(d) of this rule shall not be considered as compensated practice.

(d) Clinical Law Professors and Law Students

1. *Purpose.* The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. This rule is adopted as one means of providing assistance to practicing attorneys in providing such services and to encourage law schools to provide clinical instruction in trial work of varying kinds.

2. *Activities of Clinical Law Professors.* A clinical law professor not a member of the state bar but certified pursuant to paragraph (d)(6)(A) of this rule may appear as lawyer, solely in connection with supervision of a clinical law program approved by the dean and faculty of the ~~College of Law of the University of Arizona or of the College of Law of Arizona State University~~ a law school in Arizona which is either provisionally or fully accredited by the American Bar Association, in any court or before any administrative tribunal in this state in any of the matters enumerated in paragraphs (d)(3)(A)-(D) of this rule on behalf of any person, if the person on whose behalf the appearance is being made has consented in writing to that appearance. Such written consent shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

3. *Activities of Law Students.*

A. An eligible law student may appear in any court or before any administrative tribunal in this state on behalf of any person if the person on whose behalf the student is appearing has consented in writing to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters:

i. any civil matter: in such cases in justice, municipal, and magistrate courts, the supervising lawyer is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the supervising lawyer's absence;

ii. any misdemeanor criminal defense matter in justice, municipal, and magistrates courts: in such cases the supervising lawyer is not required to be personally present in court except during trial if the person on whose behalf an appearance is being made consents to the supervising lawyer's absence.

iii. any felony criminal defense matter in justice, municipal, and magistrate courts and any criminal matter in superior court: in such cases the supervising lawyer must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

Notwithstanding anything hereinabove set forth, the court may at any time and in any proceeding require the supervising lawyer to be personally present for such period and under such circumstances as the court may direct.

B. An eligible law student may also appear in any criminal matter on behalf of the state or any political subdivision thereof with the written approval of the prosecuting attorney or that attorney's authorized representative. In all appearances in criminal cases a supervising lawyer must be present except when such appearance is in justice, municipal, or magistrate courts.

C. In each case, the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition, the student shall orally advise the court on the occasion of the student's initial appearance in the case of the certification to appear as a law student pursuant to this rule.

D. Under the general supervision of the supervising lawyer, but outside his personal presence, an eligible law student may engage in other activities, including:

i. preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer;

ii. preparation of briefs, abstracts and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising lawyer;

iii. assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this court (if there is a lawyer of record in the matter, all such assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record);

iv. rendering legal advice and performing other appropriate legal services, but only after prior consultation with and upon the express consent of the supervising lawyer.

E. An eligible law student may participate in oral argument in this Court and the court of appeals, but only in the presence of the supervising lawyer.

F. All activities under this rule must be part of the law school's educational and clinical law practice program approved by the dean and faculty of the

~~College of Law of the University of Arizona or the College of Law of Arizona State University, or other law school's juris doctorate program approved and accredited by the American Bar Association~~ a law school either provisionally or fully accredited by the American Bar Association. A written statement of the contents of the school's educational and clinical law practice program of the ~~Arizona State University or University of Arizona College of Law or other law school's juris doctorate program~~ either provisionally or fully approved and accredited by the American Bar Association shall be filed with the executive director of the state bar not later than thirty days prior to the commencement of the program.

4. *Requirements and Limitations for Clinical Law School Professors.* In order to make an appearance as lawyer pursuant to this rule, the clinical law professor must:

A. be duly employed as a faculty member of ~~the College of Law of the University of Arizona or the College of Law of Arizona State University~~ a law school in Arizona which is either provisionally or fully accredited by the American Bar Association for the purpose, *inter alia*, of instructing and supervising a clinical law program approved by the dean and faculty of such law school;

B. be admitted by examination to the bar of another state or the District of Columbia;

C. neither ask for nor receive any compensation or remuneration of any kind for such services from the person on whose behalf the services are rendered; and

D. certify in writing that the clinical law professor has read and is familiar with the Arizona Rules of Professional Conduct and the Rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of lawyers.

5. *Requirements and Limitations for Law Students.* In order to make an appearance pursuant to this rule, the law student must:

A. ~~either be duly enrolled in the College of Law of the University of Arizona or the College of Law of Arizona State University or be duly enrolled in a law school's juris doctorate program~~ either provisionally or fully approved and accredited by the American Bar Association, and be supervised by a member of the State Bar of Arizona, and be certified by the deans of the law school on a form approved by the clerk of this Court showing compliance with Rules 38(d)(3)(F), 38(d)(5)(B) and (C), and 38(d)(7);

B. have successfully completed legal studies amounting to at least three semesters, or the equivalent if the school is on some basis other than a

semester basis;

C. be certified by the dean of the law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern, including instruction in civil, criminal, and courtroom procedure;

D. neither ask for nor receive any compensation or remuneration of any kind for such services from the person on whose behalf the services are rendered, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the eligible law student, nor shall it prevent any such lawyer or agency from making such charges for its services as it may otherwise properly require; and

E. certify in writing that the student has read and is familiar with the Arizona Rules of Professional Conduct and the rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of attorneys.

6. Certification.

A. The certification of a clinical law professor by the law school dean shall be filed with the clerk of this Court and with the state bar and shall remain in effect until withdrawn.

B. The certification of a law student by the law school dean shall be filed with the clerk of this Court and with the state bar and, unless it is sooner withdrawn, it shall remain in effect until the expiration of eighteen months after it is filed or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. As to any student who passes that examination, the certification shall continue in effect until the date the student is admitted to the bar.

C. In the case of either a clinical law professor or a law student, certification:

i. may be withdrawn by the dean at any time by filing a notice to that effect, with or without stating the cause for withdrawal, with the clerk of this Court, who shall forthwith mail copies thereof to the clinical law professor or the law student and the supervising lawyer;

ii. may be terminated by this Court at any time without cause and without notice or hearing by filing notice of the termination with the clerk of the Court and with the state bar; and

iii. shall in no way be considered as an advantage or a disadvantage to the professor or student in an application for admission to the state bar.

D. The procedures otherwise provided by law or court rule governing the discipline of lawyers shall not be applicable to the termination of the

certification of a clinical law professor or law student pursuant to this rule. Termination of certification shall be without prejudice to the privilege of the professor or student to make application for admission to practice law if the professor or student is in other respects qualified for such admission.

7. *Supervision.* In this rule, "supervising lawyer" means either a clinical law professor or a member of the state bar in each case whose service as a supervising lawyer for this program is approved by the dean of the a provisionally or fully accredited law school in which the law student is enrolled or ~~(in the case of a law student enrolled in a law school other than the Arizona State University or University of Arizona College of Law) whose service as a supervising lawyer is approved by the dean of that law school in which the student is enrolled.~~ An eligible law student shall do any of the things permitted by this rule only under the supervision of the supervising lawyer. The supervising lawyer shall not delegate this responsibility to another except that the incumbent of a public office may designate one or more qualified deputies for this purpose. The supervising lawyer shall:

- A. assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work;
- B. assist in the student's preparation to the extent the supervising lawyer considers it necessary; and
- C. agree to serve as a supervising lawyer and to participate ~~either in the program administered by the Arizona State University or University of Arizona College of Law, or agree to participate in the program or activities authorized and certified by the dean of a~~ provisionally or fully accredited law school's juris doctorate program. ~~other than the Arizona State University or University of Arizona College of Law.~~

8. *Miscellaneous.*

- A. To the extent that a professor or student is engaged in practice of law under this rule, the professor or student shall, for the limited purpose of performing professional services as authorized by this rule, be deemed active members of the state bar (but not required to pay fees).
- B. The provisions of this rule shall govern rather than the provisions of other rules relating to admission and discipline.
- C. Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that person might lawfully do prior to the adoption of this rule.
- D. The rules of law and of evidence relating to privileged communications between attorney and client shall govern communications made or received

by professors or students certified under the provisions of this rule. All persons participating in a program of instruction pursuant to which a professor or student is certified under this rule are enjoined not to disclose privileged or confidential communications whether in the implementation of a course of instruction or otherwise.

CONCLUSION

Petitioners respectfully request expedited adoption of the proposed amendments, at the Court's earliest convenience, in order to serve the needs of the public for access to legal services and the needs of current law students for access to clinical education.

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President, State Bar of Arizona

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Dean, University of Arizona College of Law

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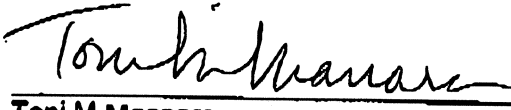
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Dean, University of Arizona College of Law

Sept. 25, 2007
date

Patricia D. White
Dean, Arizona State University College of Law

date

Dennis Shields
Dean, Phoenix School of Law

date

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(FAX) 6026826998

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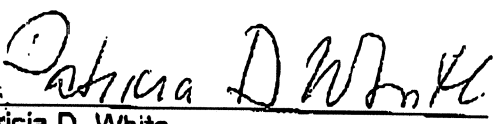
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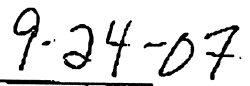
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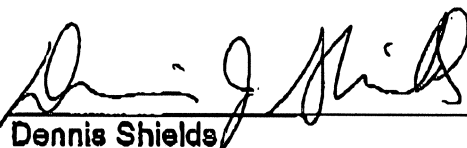
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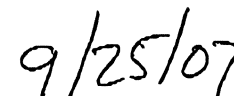
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